# INDEX


| | Page |
|---|---|
| Opinion below | 1 |
| Jurisdiction | 2 |
| Question presented | 2 |
| Statement | 3 |
| Reasons for granting the writ | 9 |
| Conclusion | 17 |


## CITATIONS


| Cases: | |
|---|---|
| *Arkadelphia Milling Co.* v. *St. Louis S.W. Ry. Co.*, 249 U.S. 134 | 12 |
| *Baltimore & Ohio R.R. Co.* v. *United States*, 279 U.S. 781 | 12, 14 |
| *Booth* v. *American Tel. & Tel. Co.*, 253 F. 2d 57 | 13 |
| *Chander & Price Co.* v. *Brandtjen & Kluge, Inc.* 296 U.S. 53 | 14 |
| *Columbus Gas Co.* v. *American Fuel Co.*, 322 U.S. 379 | 14 |
| *Federal Power Commission* v. *Interstate Gas Co.*, 336 U.S. 577 | 12 |
| *Inland Steel Co.* v. *United States*, 306 U.S. 153 | 11, 12 |
| *Lincoln Gas Co., Ex parte*, 256 U.S. 512 | 12, 14 |
| *Natural Gas Pipeline Co.* v. *Federal Power Commission*, 128 F. 2d 481 | 12 |
| *Public Service Commission of Missouri* v. *Brashear Freight Lines, Inc.*, 312 U.S. 621 | 12 |
| *Texas & Pac. Ry.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426 | 13–14 |
| *United States* v. *Morgan*, 307 U.S. 183 | 12, 16 |




716-546—63——1

Statute:
Communications Act of 1934, as amended, Secs. 201–205, 403 (47 U.S.C. 201), 205, 403 ..... Page 3
Miscellaneous:
Federal Rules of Civil Procedure, Rule 65(c) ..... 11
21 Fed. Reg. 1614 ..... 3

# In the Supreme Court of the United States

OCTOBER TERM, 1963

No.

UNITED STATES OF AMERICA AND FEDERAL COMMUNICATIONS COMMISSION, PETITIONERS

*v.*

WILSON & COMPANY, INC., SWIFT & COMPANY, AND ARMOUR & COMPANY

*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

The Solicitor General, on behalf of the United States and the Federal Communications Commission, petitions for a writ of certiorari to review an interlocutory order of the Court of Appeals for the Seventh Circuit granting an injunction *pendente lite* in the above cause.

## OPINION BELOW

The court of appeals filed no opinion. The order of the court granting the injunction is not reported; it and other related orders are printed in Appendices A to F, *infra*, pp. 19–22, 35–38, 41–42.

## JURISDICTION

The interlocutory injunction order of the court of appeals was entered on September 27, 1963. Rehearing *en banc* was denied in an order dated November 12, 1963; in the latter order the court also declined to modify the injunction by attaching certain protective conditions thereto, as requested by the government. The jurisdiction of this Court is invoked under 5 U.S.C. 1040 and 28 U.S.C. 1254(1).

## QUESTION PRESENTED

The Federal Communications Commission entered orders revising common carrier tariff rates for private-line telegraph and telephone services. While some rates in each class of service were raised and some lowered, the net effect was to raise telegraph rates and to lower telephone rates. Review of the Commission's orders was sought in the court of appeals only by certain private-line telegraph customers objecting to the higher telegraph rates. The court below, to guard against injury to those customers in the event that the Commission's orders as to telegraph rates are ultimately reversed, stayed, *pendente lite*, the whole of the Commission's orders, including those provisions prescribing the lowered telephone rates (which have not been challenged).

The question presented is whether the court below failed in its responsibilities as a court of equity by refusing to condition its injunction so as also to protect from injury those members of the public who are being deprived by the stay of the benefit of the telephone rate reductions ordered by the Commission.

STATEMENT

On March 7, 1956, the Federal Communications Commission instituted an investigation, pursuant to Sections 201–205 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 201–205, 403, into the lawfulness of charges for private-line (leased facility) services contained in the tariffs of the American Telephone & Telegraph Company and associated telephone companies ("AT&T"), and the Western Union Telegraph Company ("Western Union") (21 Fed. Reg. 1614).[1]

Hearings were held (FCC Docket Nos. 11645 and 11646) during 1957, 1958, and 1959, and the record was closed on September 16, 1959. Prior to any decision on the matters at issue, the Commission, on June 25, 1958, ordered an interim reduction in AT&T's gross revenues from private-line telephone services of approximately $5,700,000 per annum, thereby reducing AT&T's rate of return on these services from about 11.4 percent to about 7.3 percent. The Commission concluded from its examination of AT&T's

[1] Private-line services consist of the furnishing of channels by the carrier for the transmission of communications between two or more locations specified by the lessee. The services provide the lessee with the means of continuous communication without the necessity for the carrier to establish connections for each individual call or message. Private-line services include various types of communication (*e.g.*, transmission of picture material, data transmission, remote meter reading). While the Commission's proceeding considered all the various types, the only services pertinent to the action in the court below are private-line telegraph and telephone services. Both AT&T and Western Union provide private-line telegraph services, but only AT&T provides private-line telephone services.

own cost evidence of record that its charges for private-line telephone services were unjust and unreasonable and should be reduced. (Ex. A7–8, B39.)[2] The reductions became effective on August 29, 1958. The Commission denied AT&T's petition to defer reduction of telephone rates until telegraph rates could be increased, holding that there was no reason to charge users of private-line telephone services unreasonably high charges pending a possible revision of rates for private-line telegraph services.[3]

Thereafter, both AT&T and Western Union filed tariffs providing for an interim increase in private-line telegraph rates. The Commission permitted the tariffs to go into effect on December 2, 1958, but ordered both carriers to keep accounts of the amounts collected thereunder so that the Commission, in its final decision, might order any refunds found to be warranted. As a result of these interim increases, the rate of return from telegraph services for each of the carriers was raised to approximately 5.9 percent. (Ex. A8, B40.)

On July 14, 1961, the Commission issued an initial decision prescribing rates for all telegraph and telephone private-line services (Ex. A2–A235). The Commission found that the level of AT&T's and Western Union's "pre-interim telegraph rates was unreason-

[2] "Ex." refers to the printed "Exhibits A, B, C, and D to Petition for Review" filed in the court below. This exhibit contains the initial and final decisions of the Commission, and its memorandum opinion and order in the above dockets.

[3] See Supplemental Brief of the United States and the Federal Communications Commission in opposition to application for interlocutory injunction (Supplemental Brief), p. 4.

ably low * * * [and] continues to be inadequate under the current interim rates." On the other hand, AT&T's private line telephone earnings were found to have been "unreasonably high." (Ex. A103.) Accordingly, the Commission concluded that revisions were necessary. Although some increases and some reductions of rates were prescribed within each of the two classes of services, the net effect was a further reduction in telephone rates of approximately $1.6 million per year, in terms of 1955 best-year volumes of business, and $5.2 million based on December 1962 volumes; and a further annual increase of approximately $2.7 million in telegraph rates, based on 1955 volumes, and $3 million, in terms of December 1962 figures (Ex. A106, A107; Supplemental Brief, Attachment 2).

In prescribing the above rates the Commission was guided by the carriers' cost of providing each service. It stated that "the cost of providing service constitutes the most reliable criterion available for determining just, reasonable and non-discriminatory rates" (Ex. A96). And it analyzed separately cost data for telephone and telegraph services (see Ex. A259–A262). The Commission also specifically ruled that rates for each service should be independently reasonable; it rejected the argument that some services should be offered at rates which would subsidize, or be subsidized by, rates for other services, observing that "care must be taken to avoid excessively high rates for a carrier's noncompetitive services * * * which tend to offset deficiencies resulting from unduly low rates for competitive services" (Ex. A104).

On October 16, 1961, petitioners below, Wilson & Co., Inc., Swift & Co., and Armour & Co. ("meat

packers"), filed a petition for leave to intervene in the proceedings before the Commission and submitted exceptions to the initial decision. The meat packers alleged that they leased a large number of telephone and telegraph circuits and that the rates prescribed in the initial decision would result in substantial increases in charges to them for private-line telegraph services. Their petition for leave to intervene was granted. (Supplemental Brief, p. 7.)

On January 30, 1963, the Commission issued a final decision substantially affirming its initial findings and conclusions as to the rates for both private-line telegraph and telephone services (Ex. B1–B37). Petitions for reconsideration were denied in a memorandum opinion and order issued on May 29, 1963 (Ex. C1–C11). The Commission's order required AT&T and Western Union to file tariffs, effective August 1, 1963, implementing the prescribed rates and to proceed forthwith to make refunds of such of the interim increased telegraph charges as were found unjustified (Ex. C10–C11).

In a joint petition for review filed with the Seventh Circuit, the meat packers urged (at p. 11) that the Commission's orders "be determined invalid and be set aside" insofar as they directed changes in rate structures applicable to "private line telegraph service."[4] Concurrently, they filed an application

[4] Illustrative of the limited scope of the meat packers' challenge is their designation as "[o]ne of the most significant changes in the rate structures for private line telegraph service" the Commission's abrogation of the carriers' practice of offering private-line telegraph services on the basis of "clock

for an interlocutory injunction staying the Commission's orders "so far as such orders prescribe the rates, to become effective August 1, 1963, for private line telegraph services" furnished by AT&T and Western Union. The application alleged that the Commission's orders would increase the meat packers' costs for telegraph services by $95,510 per year. A motion for a temporary stay was also filed.

The Commission opposed the requests. AT&T, an intervenor in the court below, filed an answer urging that the interlocutory injunction either be denied or, if granted, that it be applied to the Commission's orders in their entirety.

On July 31, 1963, the court granted the application for interlocutory injunction, stating that (App. A, *infra*, pp. 19, 20)—

> this interlocutory injunction be not limited to petitioners, but that it "apply generally to the orders in FCC Dockets Nos. 11645 and 11646."

Later the same day that order was vacated and replaced by an order temporarily staying the Commis-

---

hour" rates (Petition, pp. 5–6). Those rates were offered to telegraph customers requiring less than 24-hour a day service, and payment thereunder was based upon the number of hours of each day and the number of days of each week the customer utilized such services (*id.* at 6–7). The Commission found that "clock hour" rates were not offered to telephone customers (Ex. A110), and that the carriers' cost for providing telegraph services was the same regardless of the number of hours any customer used the services. Therefore, the Commission concluded that "clock hour" rates were discriminatory and abolished them, with the result that the meat packers received substantial increases in their telegraph rates. (Ex. A111–A117, B27–B28.)

716-546—63——2

sion's orders "in their entirety" for 60 days (App. B, *infra,* pp. 21–22).

On August 16, 1963, the government moved for an order requiring AT&T to file a bond and to render an accounting (App. C, *infra,* pp. 23–32). The motion alleged that application of the stay to telephone rates (which had been generally lowered by the Commission's orders and which had not been challenged in the petition for review) would cause irreparable injury to the consuming public unless AT&T were required to account for and pay back excess charges collected during the pendency of the injunction. AT&T filed an opposition, urging that the rate reductions as to which the government was requesting a bond could not be separated from the other rate orders, and that if there was to be a resettlement it should not be limited to rates reduced by the Commission's orders. The government's motion was denied on September 4, 1963 (App. C, *infra,* p. 35). The proposal contained therein was later resubmitted to the court in a brief opposing the interlocutory injunction. The government submitted a draft order and stated in its Supplemental Brief (p. 2):

> In the event that the Commission's orders are * * * enjoined by the Court, in whole or in part, we respectfully invoke the Court's equitable power to condition any injunctive relief upon accounting by the carriers and refunds of any charges in excess of the rates prescribed by the Commission, if such rates are not found unlawful by the Court on review of the merits.

The court, on September 27, 1963, enjoined the Commission's orders in Docket Nos. 11645 and 11646 "in

their entirety". The interlocutory injunction contained none of the conditions requested by the government for the protection of the telephone users, nor did it articulate any basis for the court's refusal to attach such conditions. (App. D, *infra*, pp. 36–38.)

On October 18, 1963, the government sought leave to file an additional pleading. This proposal, with which AT&T and Western Union agreed in principle, was that the court enjoin only those rates which had been reduced by the Commission; the carriers were to be permitted to collect, *pendente lite*, either the rate fixed by the Commission or the rate in effect when the suit was brought, whichever was higher, subject to refund with interest if the ultimate resolution of the case so warranted.[5] This motion was denied on October 30, 1963 (App. E, *infra*, p. 41).

Previously, on October 7, 1963, the government had moved for rehearing *en banc* of the order granting the interlocutory injunction without protective conditions. The full court denied this motion on November 12, 1963, with Judge Duffy stating his independent "opinion" that "a bond should be required of [AT&T] in order to protect the public from any injury that might result from the injunction heretofore ordered by this Court" (App. F, *infra*, p. 42).

## REASONS FOR GRANTING THE WRIT

This controversy arises out of an order by the Federal Communications Commission revising rates for

[5] AT&T orally advised the government that its agreement did not extend to refunding higher rates already collected as of that time, and the government's motion acceded to this modification of the proposal.

private-line telegraph and telephone services. The order found that the rates for telegraph services, where AT&T and Western Union were in competition, were unreasonably low, while the rates for the non-competitive telephone services of AT&T were excessive. The Commission accordingly prescribed increases in the former category and reductions in the latter. While that portion of the Commission's order which increased the telegraph rates was appealed by the meat packers, neither AT&T nor any other party sought review of the lower telephone rates prescribed by the Commission. At the request of the meat packers, the Seventh Circuit issued an injunction staying the administrative order *pendente lite*. At AT&T's request, that injunction was made applicable not only to the telegraph rates, which alone were in issue, but to the unchallenged telephone rates as well.

Having taken steps to safeguard the interests both of the meat packers and of the carrier, and having deprived telephone customers of the immediate benefit of rate reductions which had not even been attacked, the court was plainly under a duty to insure that those customers would not be irreparably injured as a consequence of the injunction. To that end, the court should have imposed upon AT&T, as a condition of granting it equitable relief, an explicit obligation to refund any charges ultimately found excessive and to maintain appropriate accounts to assure the prompt and convenient satisfaction of that obligation. It is the refusal of the court to impose those protective

conditions which we challenge in this petition. That refusal, we submit, was a serious abuse of discretion and a violation of fundamental principles of equity long recognized by this Court.

As a result of the course followed by the court below, some 4500 telephone customers are now paying rates which exceed by more than $5,000,000 the maximum lawful rates as determined by the Commission, without any assurance that the overcharges will be refunded to them. Since (1) the issue presented in this case is narrow and sharply defined, (2) the court's action violated well settled principles, and (3) the need for relief is immediate, we respectfully urge the Court to dispose of the merits without further briefing or oral argument.

1. Even in the ordinary case—*i.e.* the case in which no question arises as to the power of the court to stay the rates—the court which grants an injunction must be astute to "protect * * * other interests—represented by the Commission—from injuries that the injunction might cause." *Inland Steel Co.* v. *United States*, 306 U.S. 153, 157–158.[6] If it enjoins the agency order, it must "do so upon conditions that will protect all—including the public—whose interests the injunction may affect." *Id.* Specifically, if it stays the effec-

[6] Compare Rule 65(c) of the Federal Rules of Civil Procedure, which prohibits the issuance of a restraining order or preliminary injunction "except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."

tiveness of a rate reduction, it must take steps which provide assurance that, if the agency's order is ultimately upheld, the parties will be placed "in the position in which they would have been had there not been a postponement of the effective date of the rate reduction * * *." *Federal Power Commission* v. *Interstate Gas Co.*, 336 U.S. 577, 586; *Public Service Commission of Missouri* v. *Brashear Freight Lines, Inc.*, 312 U.S. 621, 629; *United States* v. *Morgan*, 307 U.S. 183, 191, 197; *Inland Steel Co.* v. *United States*, 306 U.S. 153, 157; *Baltimore & Ohio R.R. Co.* v. *United States*, 279 U.S. 781, 785–786; *Ex parte Lincoln Gas Co.*, 256 U.S. 512, 517; *Arkadelphia Milling Co.* v. *St. Louis S.W. Ry. Co.*, 249 U.S. 134, 145, 146; *Natural Gas Pipeline Co.* v. *Federal Power Commission*, 128 F. 2d 481, 486 (C.A. 7). That precept is a corollary of "the principle, long established and of general application, that a party against whom an erroneous judgment or decree has been carried into effect is entitled, in the event of a reversal, to be restored by his adversary to that which he has lost thereby. * * * It is one of the equitable powers, inherent in every court of justice so long as it retains control of the subject-matter and of the parties, to correct that which has been wrongfully done by virtue of its process." *Arkadelphia Co.* v. *St. Louis S.W. R.R. Co.*, *supra*, at 145–146.

From these principles and decisions it plainly follows that if the lower telephone rates ordered by the Commission are ultimately upheld (or left unaffected) by the Seventh Circuit's decision on the merits, the telephone customers will at that time be entitled to

an order requiring restitution of the excessive amounts collected under color of the injunction. Moreover, since the court of appeals would be obligated to order restitution at the close of the case, it was equally under a duty to preserve the efficacy of that remedy by attaching protective conditions at the time of issuing the injunction. For in the absence of a provision requiring AT & T to keep appropriate records during the period of litigation, it is far from certain whether an accounting will later be feasible. We have no assurance that the records currently maintained by AT & T will enable it to compute retroactively the billings it would have made had the Commission's order not been stayed. The carrier itself, which plainly has the burden of proof in this matter, has given none. In sum, each day's delay in imposing record-keeping requirements progressively endangers the effectiveness of the restitution remedy.

Nothing in the statutory scheme under which the Commission operates casts doubt upon the right of restitution. Indeed, Section 207 of the Communications Act (47 U.S.C. 207) itself confers a right of reparation upon any person damaged by the unlawful conduct of a carrier subject to the Act. Under that provision, a telephone customer from whom the carrier collects rates already found by the Commission to be unlawful can undoubtedly recover the excess, either through judicial or administrative proceedings, once the Commission's determination has been affirmed on appeal. *Booth* v. *American Tel. & Tel. Co.*, 253 F. 2d 57, 58 (C.A. 7); cf. *Texas & Pac. Ry.* v. *Abilene Cotton Oil Co.*, 204

U.S. 426. This statutory remedy, however, is not an adequate substitute for the automatic restitution which a court of equity must grant when an unlawful rate has been collected by virtue of its process. The telephone customers, having been required during the pendency of the appeal to pay presumptively excessive rates, should not also bear the onus of keeping records and initiating litigation. Here, moreover, as in other cases in which the court has sustained the right to equitable restitution, the "consumers [are] so many in number, and the difficulty of sustaining their individual claims through separate suits would be so great, that to remit them to such suits would be a virtual denial of justice." *Ex parte Lincoln Gas Co.*, 256 U.S. 512, 517; *Baltimore & Ohio R.R. Co.* v. *United States*, 279 U.S. 781, 786.

2. Here, even more than in the usual rate case, it was incumbent upon the court to adopt measures for the protection of the ratepayers. For in the instant case it is questionable whether the reduced telephone rates could properly be enjoined at all. The meat packers expressly confined their joint appeal to that portion of the Commission's order which established increased telegraph rates; and AT&T, which failed to seek review even on a protective or conditional basis, cannot, as an intervenor, enlarge the grounds for relief asserted by the appellants. *Columbus Gas Co.* v. *America Fuel Co.*, 322 U.S. 379; *Chandler & Price Co.* v. *Brandtjen & Kluge, Inc.*, 296 U.S. 53, 58.

This consideration apart, there is little likelihood that a resolution of the merits favorable to the meat

packers would provide any logical justification for an upward revision of the telephone rates. To be sure, AT & T, in urging that the Commission's order be stayed in its entirety, maintained that the telegraph and telephone charges were part of a single interdependent rate structure, and that the carrier ought not be limited to a reasonable return from telephone services unless it receives a statisfactory return from telegraph services as well. The Commission's order, however, flatly contradicts that view.

The Commission made it clear that the rate for each service must be based on the cost of rendering that particular service, *i.e.*, that the reasonableness of each charge must be determined independently. Indeed, the whole purpose of the revisions prescribed by the Commission was to assure that each separate service would earn a reasonable return and, as a consequence, that all services would earn roughly the same rate of return (7.3 percent). This approach was in sharp contrast to the carrier's existing (pre-interim) rate structure, in which deficient returns averaging 2.2 percent for various private-line telegraph services (Ex. A108) were compensated for, in AT&T's case, by unduly high rates averaging 11.5 percent (Ex. A102) for private-line telephone services. In rejecting the view, espoused by AT&T, that some services might be offered at rates which would subsidize or be subsidized by others, the Commission stressed that "care must be taken to avoid excessively high rates for a carrier's noncompetitive services * * * which tend to offset deficiencies resulting from unduly low rates for

competitive services" (Ex. A104). That basic rate-making principle was apparently not challenged in the meat packers' petition for review. For that matter, none of the grounds for relief set forth in that petition, even if accepted by the court, would call for an upward revision of the telephone rates.

On the other hand, in the course of passing on the validity of the telegraph rates, the court may deal with the propriety of the former disparities in rate of return between the telegraph and telephone services the argument, for example, that AT&T should have discretion to design its own rate structure so long as its overall rate of return is not excessive). Such a position, if adopted by the court, might conceivably lead to some increases in the Commission-prescribed telephone rates to offset decreases in the telegraph charges. Since that possibility, though remote, cannot altogether be discounted, we are reluctant to urge that it was an abuse of discretion to hold the telephone rates in abeyance pending the outcome of the appeal.[1] But surely if AT&T, as an intervenor, is to be afforded full protection against unlikely contingencies, the telephone rate payers should not be required to suffer more immediate con-

[1] There is also the possibility that, if the telegraph rates are set aside on grounds unrelated to the merits of the telephone rates, the court of appeals might nevertheless remand the entire rate order, including the telephone rates, to the Commission for reconsideration. Any remand, however, would not eliminate the telephone consumers' right to reimbursement for the period of judicial review, should the Commission's rate reductions ultimately be affirmed. *United States* v. *Morgan*, 307 U.S. 13, 195–198.

sequences—to pay presumptively excessive rates without even the assurance of such redress as would be provided by an explicit refund condition and the imposition of adequate accounting requirements.

## CONCLUSION

This is a case in which relief must be expeditious if it is to be meaningful. So long as the injunction contains no record-keeping requirements, there is a likelihood that refunds will not be feasible even if the court of appeals should ultimately order them. Nearly five months have already elapsed since the reduced telephone rates fixed by the Commission were to have gone into effect. The charges found by the Commission to be excessive continue to accumulate at a rate of approximately $15,000 per day. It is evident that during the time required for further briefing and oral argument of the case large sums could be irretrievably lost to the rate-payers. We submit that the issue for decision is narrow and clear and that the action taken by the court below plainly requires correction. In these circumstances, the need for additional briefing and argument is minimal, while the need for expenditious relief apparent. Accordingly, we respectfully urge the Court to grant the petition for certiorari and reverse summarily the order of the

court of appeals denying the government's motion to modify the injunction.*

ARCHIBALD COX,
*Solicitor General.*
WILLIAM H. ORRICK, Jr.,
*Assistant Attorney General.*
LIONEL KESTENBAUM,
GEORGE R. KUCIK,
*Attorneys.*

MAX D. PAGLIN,
*General Counsel,*
DANIEL R. OHLBAUM,
*Associate General Counsel,*
MICHAEL FINKELSTEIN,
*Counsel,*
*Federal Communications Commission.*

DECEMBER 1963.

---

* We do not urge that this Court need fashion the terms of protective conditions, but only that it direct the court of appeals to take appropriate measures to assure the prompt payment of refunds, together with interest, in the event that the amounts collected during the course of the judicial proceedings exceed the amounts ultimately determined to be lawful. And, in view of the lapse of time since the effective date of the Commission's order (August 1, 1963), the refund obligation should clearly be made retroactive to that date.

We also note that we are seeking an appropriate injunctive order from the Circuit Justice pending the action of this Court.

# APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Ill.

No. 14269

WILSON & CO., INC., ET AL., PETITIONERS

*v.*

FEDERAL COMMUNICATIONS COMMISSION, ET AL., RESPONDENTS

*Petition for review of an order of the Federal Communications Commission.*

Wednesday, July 31, 1963

Before WIN C. KNOCH, and ROGER J. KILEY, Circuit Judges.

This cause came on to be heard upon the petitioners' application for interlocutory injunction restraining the enforcement of Federal Communication Commission orders in FCC Dockets Nos. 11645 and 11646 so far as such orders prescribe rates to be effective August 1, 1963 for private line telegraph services furnished petitioners by American Telephone and Telegraph Company and Western Union Telegraph Company pending disposition of petitioners' Joint Petition For Review of said orders; and upon petitioners' motion for temporary stay of said Commission orders pending disposition by this court of their application for said interlocutory injunction pending disposition of the said Joint Petition For Review; and upon motion of A.T. & T. and Bell System Com-

panies for oral argument on petitioners' said motion for temporary stay.

The court having read the pleadings of the several parties and being further fully advised, IT IS ORDERED: (1) Motion for oral argument on petitioners' motion for temporary stay is DENIED. (2) IT IS FURTHER ORDERED that petitioners' application for an interlocutory injunction "suspending and restraining the enforcement operation and execution" of the orders entered by the Commission so far as such orders prescribe rates to be effective August 1, 1963 for private line telegraph services furnished by A.T. & T. and Western Union be and IS HEREBY GRANTED; and that this interlocutory injunction be not limited to petitioners, but that it "apply generally to the orders in FCC Dockets Nos. 11645 and 11646."

It becomes unnecessary to pass upon the motion for temporary stay.

# APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Chicago, Ill.

No. 14269

WILSON & CO., ET AL., PETITIONERS

*v.*

FEDERAL COMMUNICATIONS COMMISSION, ET AL., RESPONDENTS

*Petition for review of an order of the Federal Communications Commission.*

Wednesday, July 31, 1963

Before WIN G. KNOCH, and ROGER J. KILEY, *Circuit Judges.*

This cause came on to be heard upon the petitioners' application for interlocutory injunction restraining the enforcement of Federal Communications Commission orders in FCC Dockets Nos. 11645 and 11646 so far as such orders prescribe rates to be effective August 1, 1963 for private line telegraph services furnished petitioners by American Telephone and Telegraph Company and Western Union Telegraph Company pending disposition of petitioners' Joint Petition For Review of said orders; and upon petitioners' motion for temporary stay of said Commission orders pending disposition by this court of their application for said interlocutory injunction pending

disposition of the said Joint Petition For Review; and upon motion of A.T. & T. and Bell System Companies for oral argument on petitioners' said motion for temporary stay.

The court having read the pleadings of the several parties and being further fully advised, IT IS ORDERED that the motion of A.T. & T. and Bell System Companies for oral argument is denied.

It appears to the court from the facts stated in the pleadings before it that irreparable damage would result to petitioners in additional charges for interstate private line telegraph services approximating $95,510.00 per year, and the court so finds for the purpose of this temporary stay,

IT IS THEREFORE ORDERED that petitioners' motion for a temporary stay of the effect of the operation of Federal Communication Commission's orders in FCC Dockets Nos. 11645 and 11646 be and it is hereby granted as to the orders in their entirety; and said orders of the Commission are stayed for sixty (60) days from this date pending the hearing on petitioners' application for an interlocutory injunction restraining the enforcement of said Commission orders, said hearing to be held within said sixty (60) days, at such time as this court will designate on due notice to the parties and to the Attorney General of the United States.

IT IS FURTHER ORDERED that the issues raised by petitioners' application for interlocutory injunction restraining operation of the Commission's said orders, pending review of the Joint Petition For Review, be and the same are hereby reserved to the hearing on the application for interlocutory injunction to be heard at the time to be set by this court.

IT IS FURTHER ORDERED that the order heretofore entered on this date in the above cause be, and the same is hereby vacated and set aside.

## APPENDIX C

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago, Ill.

Case No. 14269

WILSON & CO., INC., SWIFT & COMPANY, AND ARMOUR & COMPANY, PETITIONERS

*v.*

UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS COMMISSION, RESPONDENTS

AERONAUTICAL RADIO, INC., WESTERN UNION TELEGRAPH COMPANY, AMERICAN TELEPHONE AND TELEGRAPH COMPANY AND BELL SYSTEM ASSOCIATED COMPANIES, INTERVENORS

MOTION OF THE UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS COMMISSION FOR ORDER REQUIRING THE FILING OF A BOND AND ACCOUNTING BY THE AMERICAN TELEPHONE AND TELEGRAPH COMPANY AND BELL SYSTEM ASSOCIATED COMPANIES

The United States of America and the Federal Communications Commission, respondents herein, respectfully move the Court for an order requiring the American Telephone and Telegraph Company and Bell System Associated Companies (AT&T) to execute and file with the Clerk of this Court their joint and several bond with good and sufficient surety, in the principal amount of $1,000,000, in a form to be approved by a Judge or the Clerk of this Court, ac-

knowledging themselves bound and agreeing to keep accurate accounts, in detail, for each billing period since August 1, 1963, of all amounts received from each user of private line services, other than telegraph grade services, by reason of the Court's order of July 31, 1963, staying the effectiveness of the Commission's orders in Docket Nos. 11645 and 11646, and to report the same to the Clerk of this Court monthly in writing and under oath, with a copy of said report to the Commission; and further agreeing to refund to the users of private line services, other than telegraph grade services, any portion of the revenues collected by virtue of the Stay which are in excess of the rates for such services prescribed by the Commission's orders to be effective from August 1, 1963, in the event that the Commission's orders prescribing rates for such services are not set aside by this Court, such portion, if any, so refunded to be with interest at the rate of six per centum (6%) per annum from the date of payment to AT&T, and further agreeing to bear the costs of such refunding. The grounds for this motion are as follows:

1. By order dated July 31, 1963, the Court not only granted petitioners' motion for a temporary stay of the effect of the operation of the Commission's orders in FCC Docket Nos. 11645 and 11646 so far as such orders prescribed rates to be effective August 1, 1963, for private line telegraph services furnished petitioners by AT&T and Western Union Telegraph Company pending disposition by this Court of petitioners' application for interlocutory injunction, but also stayed the Commission's orders in Docket Nos. 11645 and 11646 in their entirety for sixty (60) days from the date of the Court's order pending hearing on petitioners' application for interlocutory injunction.

Thereafter, the United States and the Commission filed an emergency motion, dated August 2, 1963, requesting the Court to modify its stay order of July 31, 1963, so as to make the temporary stay applicable only to those portions of the Commission's orders in Docket Nos. 11645 and 11646 which prescribe rates for private line telegraph services, and to permit those portions of the Commission's orders which apply to other private line services to become effective immediately. By order dated August 13, 1963, the Court denied the Government's motion.

2. As grounds for the relief requested in the Government's motion, it was alleged in part, with supporting affidavits, that the extension of the temporary stay, beyond the relief sought by petitioners as to private line telegraph services, to affect also those portions of the Commission's orders applicable to private line services other than telegraph grade service, would cause irreparable injury to the public and the users of such services, since the Commission's orders in Docket Nos. 11645 and 11646 prescribed substantial rate reductions in the preponderance of such services, to be effective August 1, 1963. The motion further asserted (Emergency Motion, p. 8) that there was no statutory provision for restitution to these users and the public for the losses which would be incurred by them if the Court's order of July 31, 1963 was not modified as the Government respectfully requested, and that protection of these users could only be fully assured through the exercise of the equity powers of the Court.

3. By its "Supporting Motion for Modification of Temporary Stay Order," intervenor Aeronautical Radio, Inc., alleged irreparable losses to it and each of its member airlines using private line services other

than telegraph grade service, which could not be estimated precisely but which were asserted to be substantial, in the event that the temporary stay was not modified to affect only the rates prescribed for private line telegraph service.

4. "Petitioners' Reply to Motions for Modification of the Temporary Stay," did not either support or object to the Government's motion. However, petitioners alleged (Reply, p. 3, fn. 3) that they would stand to benefit from a grant of that motion since they lease 18 telephone circuits from AT&T and the reduced rates prescribed by the Commission would result in a reduction in annual charges to petitioners of almost $7,500.

5. The "Response of the American Telephone and Telegraph Company and Bell System Associated Companies in Opposition to the 'Emergency Motion' by the United States and the Federal Communications Commission for Modification of Temporary Stay," estimates that the net annual reduction in its revenues from private line telephone grade rates, had the Commission's orders been permitted to become effective, would have exceeded $1,034,000 per year on the basis of 1955 test period figures (Response of AT&T, p. 8). AT&T's Response further asserts (p. 8) that since the test period, changes have occurred which substantially increase this estimated amount. Moreover, since the $1,034,000 net figure reflects all private line telephone grade rates, including private line telephotograph service where increased rates were prescribed (Exhibit B to Joint Petition for Review, p. B-39), the loss to the users of private line telephone services is substantially greater than the net effect on AT&T's revenues from telephone grade services. This increased loss is apart from the fact that current losses would substantially exceed losses based on the test

period figures. Accordingly, while we believe that the amount of the loss to the users may be greater than that estimated by AT&T, the admitted annual loss will be substantially in excess of $1,000,000, and the loss during the 60 day stay period will substantially exceed one-sixth of that amount. Under the circumstances, we submit that a bond of $1,000,000 would be sufficient to assure performance by AT&T in the event that refunds are ultimately required, and would afford full protection to the users.

6. The Response of AT&T, to which the Government has not previously had an opportunity to reply, urges in addition that the Commission's orders in Dockets Nos. 11645 and 11646 prescribe a single rate structure for private line telegraph and telephone grade services, which is not properly severable and which should not be stayed in part. (Response of AT&T, pp. 3-7). Although this is the position of AT&T, the Government's position is to the contrary. As set forth in that portion of the Commission's decision quoted on p. 4 of AT&T's Response, the rates of return to AT&T from telephone grade service and telegraph grade service have previously been different and have varied as to services within each of the two grades. Thus, AT&T has in general charged rates which would afford it a higher rate of return with respect to telephone grade services, where it holds a monopoly position, and has charged lower rates (affording a rate of return as low as 1.6% for local channel telegraph service) for telegraph grade services, where it competes with Western Union Telegraph Company. The new rates prescribed by the Commission (AT&T Response, p. 5) will afford AT&T rates of return that vary somewhat from service to service. The telephone rates reflect the

Commission's view that AT&T's earnings from these services have been unreasonably high, and that a reduction to approximately 7.3% would be reasonable. With respect to telegraph grade services, the Commission has endeavored to prescribe rates which will afford Western Union, as well as AT&T, a fair rate of return and has already rejected AT&T's apparent view that private line telephone users should subsidize private line telegraph rates (34 FCC 244, 300, par. 149).

Thus, should petitioners prevail on the merits of their contentions that the telegraph rate structure was adopted without prior notice to them, that the Commission erroneously failed to provide for part-time private line telegraph services, and that special and preferential treatment was afforded news agencies, a remand to the Commission would not disturb the private line telephone grade rates (Petition for Review, pp. 9–11). Even if the Court were to determine that the 1955 cost study was out of date and that telegraph rates based on current figures were required (See "Petitioners Reply to Motions for Modification of the Temporary Stay", pp. 1–2), no alteration of telephone rates would follow. For, while the Commission's decision concluded that a rate of return of approximately 7.3% is reasonable in the telegraph field, it is conceivable that it might conclude upon the basis of current figures that a lesser rate of return would be reasonable. However, it is unlikely that the Commission would alter its conclusion that a rate of return for telephone grade services higher than approximately 7.3% is unreasonable, or change the rates prescribed in the telephone field.

Moreover, notwithstanding AT&T's assertion (Response, pp. 15–16) that the telephone portions of the Commission's order are before the Court for review.

it is our contention that the Commission's Decision of January 28, 1963 in Docket Nos. 11645 and 11646 has become final and non-reviewable in this respect. Petitioners concede (Reply to Motions for Modification of the Temporary Stay, pp. 1–2), that their Petition for Review is "limited in scope to a review of only that portion of the FCC orders dealing with rates for telegraph-grade private line services." We shall urge on the merits that an intervenor may not enlarge the grounds for relief of a petition for review pursuant to Section 4 of the Judicial Review Act of 1950, 5 U.S.C. 1034, merely by filing an appearance by their attorneys in the Court or a notice of intention to intervene. If AT&T was aggrieved by the telephone portions of the Commission's orders or desired to challenge the Commission's decision on grounds other than those stated by petitioners, its remedy was to file a timely petition for review which would apprise the United States and the Commission of the nature of its complaint.

Therefore, should petitioners prevail on the merits of their petition for review and should the Government prevail on either of the foregoing contentions, the Court's action would in no way affect the lawfulness of the prescribed telephone rates. See also, *Socony Mobil Oil Company* v. *Brooklyn Union Gas Company*, 299 F. 2d 692, 695 (C.A. 5), certiorari denied 371 U.S. 887; *Humble Oil & Refining Co.* v. *Great Northern Railway Co.*, 212 F. Supp. 747, 755 (D.C.D. Mont.). And, in the event that the new telephone rates prescribed by the Commission are ultimately determined to be unlawful, AT&T would not be required to refund by a grant of this motion:

7. If there is no statutory provision for reparation to the telephone users, in the event that the Government prevails on the merits of the Petition for Review

or on either of these contentions, the end result when the stay expires may be that the telephone rates prescribed in the tariffs filed by AT&T, to be effective August 1, 1963, were the lawful rates for this period. Possibly the interstate users of private line telephone services could then sue to recover the excess collected by AT&T after August 1, 1963. But since the interstate and intrastate users of private line telephone services provided by AT&T number approximately 150,000 (Emergency Motion, Attachment C) and since a large number of these users are undoubtedly interstate, we believe that equity requires that AT&T, rather than the injured users, keep detailed accounts and bear the burden and cost of refunding the excess collected pursuant to the stay order it requested. Certainly, AT&T is in the best position to do so.

8. As this Court has well stated in *Natural Gas Pipeline Co.* v. *Federal Power Commission*, 128 F. 2d 481, where a $1,000,000 bond was required as a condition of a stay of reduced rates, (485):

> This ancillary power to do complete justice as to all the parties' interests in a fund grows out of equity jurisdiction. When invoked we can conceive of no method by which it properly may be evaded. Thus the Supreme Court, discussing the jurisdiction of a statutory district court of three judges which had enjoined an order of the Interstate Commerce Commission, referring to the duty of the court to protect the impounded fund and direct its disposition, in *Inland Steel Co.* v. *United States*, 306 U.S. 153, 59 S. Ct. 415, 417, 83 L. Ed. 557, said: "It is the duty of a court of equity granting injunctive relief to do so upon conditions that will protect all—including the public—whose interests the injunction may affect. * * * When the Court finally determined that the administrative findings and order were correct, appellant could

> claim an interest in the fund only by asserting a right to payments forbidden by law, and it became the duty of the Court promptly to allocate the fund to its lawful owner."

The Supreme Court has similarly recognized in *Federal Power Commission* v. *Interstate Gas Co.*, 336 U.S. 577, 582, that:

> When a federal court of equity grants relief by way of injunction it has a responsibility to protect all the interests whom its injunction may affect. *Inland Steel Co.* v. *United States*, 306 U.S. 153. It assumes the duty to make disposition of the fund in accord with equitable principles. *United States* v. *Morgan*, *supra*, at 191. If in a particular case the court reaches the question of reasonableness of rates, it does so only for purposes of distributing the fund for whose creation it alone was responsible. It does not fix or prescribe rates for the past or the future. The reasonableness of rates charged by the companies who claim the fund is wholly ancillary to the problem of determining what claimants are equitably entitled to share in it. See *Atlantic Coast Line R. Co.* v. *Florida*, 295 U.S. 301; *United States* v. *Morgan*, *supra*.

See also, *United States* v. *Morgan*, 307 U.S. 183, 193–195 (where a stay order had required the payment of a fund into the Court for refunds of excess charges); *Natural Gas Pipeline Co.* v. *Federal Power Commission*, 129 F. 2d 515 (C.A. 7) (requiring interest); *Natural Gas Pipeline Co.* v. *Federal Power Commission*, 131 F. 2d 137 (C.A. 7); Stay Order entered by this Court on August 30, 1940 in *Illinois Commerce Commission* v. *Natural Gas Pipeline Company of America, et al.* (No. 7439), requiring a bond of $1,000,000; *Northern Natural Gas Co.* v. *Federal Power Commission*, 245 F. 2d 447 (C.A. 8) (where a stay order dated

November 18, 1955 required a bond and an accounting for refunds of excess charges with interest);[1]

9. While a grant of this motion would fully protect the users of private line telephone services encompassed within the Court's stay order of July 31, 1963 from losses incurred since August 1, 1963, we respectfully request expeditious consideration by the Court. AT&T and other carriers have tendered to the Commission comparable tariffs for other services, which are not affected by the Court's order but which the carriers claim should be coordinated. At the present time, the rates charged for such services may vary from carrier to carrier. Accordingly, an early ruling by the Court on this motion would materially assist the Commission's efforts to effectuate the public interest in these separate, but related areas.

WHEREFORE, it is respectfully requested that this motion be granted.

Respectfully submitted.

MAX D. PAGLIN,
*General Counsel,*
RUTH V. REEL,
*Counsel,*
HERMAN I. BRANSE,
*Counsel,*
*Federal Communications Commission,*
*Washington, D.C. 20554*

LIONEL KESTENBAUM,
*Attorney*
*Department of Justice*
*Washington, D.C. 20554*

AUGUST 16, 1963.

[1] The relief requested in this motion is patterned after an order entered December 18, 1952, by the Eighth Circuit in *State Corporation Commission of the State of Kansas* v. *Federal Power Commission*, (Case Nos. 14704, 14708, and 14733, C.A. 8).

CERTIFICATE OF SERVICE

I, Herman I. Branse, hereby certify that on this 16th day of August, 1963, I mailed true copies of the foregoing "Motion of the United States of America and the Federal Communications Commission for Order Requiring the Filing of a Bond and Accounting by the American Telephone and Telegraph Company and Bell System Associated Companies" to the following:

*John H. Waters, Esq.
William Wendt, Esq.
William E. Seward, Esq.
60 Hudson Street, New York 13, New York
Counsel for Western Union Telegraph Company

Joseph DuCoeur, Esq.
Kirkland, Ellis, Hodson, Chaffetz & Masters
800 World Center Building, Washington 6, D.C.
Counsel for Aeronautical Radio, Inc.

*Charles A. Bane, Esq.
Arthur C. Gehr, Esq.
Sharon L. King, Esq.
Isham, Lincoln and Beale
72 West Adams Street, Chicago 3, Illinois
Counsel for Petitioners

*George E. Ashley, Esq.
A. Thomas Breit, Esq.
32 Avenue of the Americas, New York 13, New York
Counsel for American Telephone and Telegraph Company and Bell System Associated Companies

*Air mail.

*Howard P. Robinson, Esq.
Sidley, Austin, Burgess & Smith
11 South La Salle Street, Chicago 3, Illinois
Counsel for American Telephone and Telegraph Company and Bell System Associated Companies

HERMAN I. BRANSE.

*Air Mail.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Ill.

No. 14269

WILSON & CO. INC., SWIFT & COMPANY, AND ARMOUR & CO., PETITIONERS

*v.*

UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS COMMISSION, RESPONDENTS

AERONAUTICAL RADIO, INC., WESTERN UNION TELEGRAPH COMPANY, AMERICAN TELEPHONE AND TELEGRAPH COMPANY AND BELL SYSTEM ASSOCIATED COMPANIES, INTERVENORS

September 4, 1963

Before ROGER J. KILEY, *Circuit Judge.*

This cause came on to be heard on the Motion of the United States of America and the Federal Communications Commission for order requiring the filing of a bond and accounting by the American Telephone and Telegraph Company and Bell System Associated Companies, and response of American Telephone and Telegraph Company and Bell System Associated Companies in opposition to the motion; and the court having considered the motion and response:

IT IS ORDERED that the motion be and it is hereby denied.

# APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Ill.

No. 14269

WILSON & CO., INC., ET AL.,
PETITIONERS

*v.*

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
RESPONDENTS

*Petition for review of an order of the Federal Communications Commission.*

Friday, September 27, 1963

Before WIN G. KNOCH, ROGER J. KILEY, LUTHER M. SWYGERT, *Circuit Judges.*

This cause came on to be heard (i) upon petitioners' application for an interlocutory injunction restraining the enforcement of orders issued by Federal Communications Commission in F.C.C. Dockets Nos. 11645 and 11646 so far as such orders prescribe rates to be effective August 1, 1963, for private line telegraph services furnished by American Telephone & Telegraph Company and Western Union Telegraph Company pending disposition of Petitioners' Joint

Petition for Review of said orders; (ii) upon the order of this Court entered herein on July 31, 1963, after due notice and on petitioners' motion and after finding on evidence submitted irreparable damage would result to petitioners, staying the effect of said orders in their entirety for sixty (60) days pending a hearing on petitioners' application for an interlocutory injunction; and (iii) upon the request of Federal Communications Commission and the United States of America for oral argument upon said application, which motion for oral argument was granted by the Court and held, after due notice to all parties, on September 26, 1963, at which time counsel for petitioners, for respondents Federal Communications Commission and the United States of America and for intervenors American Telephone & Telegraph Company and Western Union Telegraph Company, appeared and presented argument respecting said application for injunction.

The Court, after hearing and having considered the pleadings, briefs and motions of the several parties, including the evidence submitted respecting the effects of said Commission orders, an interlocutory injunction and alternative suggestions for relief submitted by respondents and intervenors and having heard oral argument and being further fully advised, is of the opinion and finds that, if enforcement of said orders is not restrained, irreparable damage would result to petitioners by way of imposition of additional charges for interstate private line telegraph services approximating $95,510.00 per year.

The Court further finds that the granting of said application for interlocutory injunction without restraining the enforcement of said Commission orders in their entirety, would work irreparable damage to

numerous others, including carriers and other customers.

IT IS THEREFORE ORDERED that petitioners' application for an interlocutory injunction staying and suspending the effectiveness with respect to petitioners of the Federal Communications Commission orders in F.C.C. Dockets Nos. 11645 and 11646 be and is hereby granted pending final hearing and determination of the Joint Petition for Review.

IT IS FURTHER ORDERED that said orders of the Commission be and are hereby suspended and the enforcement, operation or execution of said orders be and is hereby restrained in their entirety pending final hearing and determination of the Joint Petition for Review.

# APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Ill.

Case No. 14269

WILSON & CO., INC., SWIFT & COMPANY, AND ARMOUR & COMPANY, PETITIONERS

*v.*

UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS COMMISSION, RESPONDENTS

AERONAUTICAL RADIO, INC., WESTERN UNION COMPANY, AMERICAN TELEPHONE & TELEGRAPH COMPANY AND BELL SYSTEM ASSOCIATED COMPANIES, INTERVENORS

MOTION FOR LEAVE TO FILE ADDITIONAL PLEADING

The United States of America and the Federal Communications Commission, respondents herein, respectfully move the Court for leave to file the attached Additional Pleading of Respondents.

The ground of this motion is that respondents wish to propose to the Court and the other parties a suggested solution to the pending dispute concerning interlocutory relief which has not been proposed before, and which we believe will protect all parties to this proceeding as well as all other persons with an interest in the Commission's Order.

We regret the necessity for filing this additional motion. However, we believe it to be warranted by

the public interest considerations involved, and by the fact that for the first time there appears to be substantial agreement with both of the carriers.

Respectfully submitted.

WILLIAM H. ORRICK, JR.,
*Assistant Attorney General,*
LIONEL KESTENBAUM,
*Attorney,*
GEORGE R. KUCIK,
*Attorney,*
*Department of Justice,*
*Washington, D.C. 20554.*

MAX D. PAGLIN,
General Counsel
DANIEL R. OHLBAUM,
Associate General Counsel,
Federal Communications Commission,
Washington, D.C. 20554

OCTOBER 18, 1963.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Ill.

No. 14269

WILSON & CO., INC., ET AL., PETITIONERS

*v.*

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
RESPONDENTS

*Petition for review of an order of the Federal Communications Commission*

Wednesday, October 30, 1963

Before WIN G. KNOCH and ROGER J. KILEY, *Circuit Judges.*

This matter comes before the Court on the motion of United States of America and Federal Communications Commission for leave to file additional pleading, and petitioners' reply to said motion, and the Court being fully advised in the premises,

IT IS ORDERED that the said motion be, and it is hereby denied.

## APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Ill.

No. 14269

WILSON & CO., INC., ET AL., PETITIONERS

*v.*

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
RESPONDENTS

*Petition for review of an order of the Federal Communications Commission*

Tuesday, November 12, 1963

Before JOHN S. HASTINGS, Chief Judge; F. RYAN DUFFY, ELMER J. SCHNACKENBERG, WIN G. KNOCH, LATHAM CASTLE, ROGER J. KILEY, and LUTHER M. SWYGERT, Circuit Judges.

This matter comes before the Court sitting en banc on the motion of the United States of America and the Federal Communications Commission for rehearing en banc, for modification of injunction, or a stay of injunction, filed herein on October 9, 1963; the petitioners' reply to the motion of the United States of America and the Federal Communications Commission for rehearing en banc, etc.; and the response of the American Telephone and Telegraph Company and Bell System Associated Companies in opposition to the motion of the United States and the Federal Communications Commission for rehearing en banc,

for modification of injunction, or a stay of injunction; and all of the active members of this Court excepting Judge Schnackenberg, who disqualified himself, having considered the said motion, reply and response, and being fully advised in the premises,

IT IS HEREBY ORDERED that the said motion filed on October 9, 1953, be, and the same is hereby denied.

(Judge Duffy is of the opinion that a bond should be required of American Telephone and Telegraph Company in order to protect the public from any injury that might result from the injunction heretofore ordered by this Court.)

(Judge Schnackenberg disqualified himself.)

U. S. GOVERNMENT PRINTING OFFICE: 1953